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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/710,981	08/16/2004	Ian Craig Barkhouse	00124-01087	4980
23416	7590	12/28/2005	EXAMINER	
CONNOLLY BOVE LODGE & HUTZ, LLP P O BOX 2207 WILMINGTON, DE 19899			LIU, JONATHAN	
			ART UNIT	PAPER NUMBER
			3673	

DATE MAILED: 12/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/710,981

Applicant(s)

BARKHOUSE, IAN CRAIG

Examiner

Jonathan J. Liu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 August 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) 12-14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 and 15-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 8/16/2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>10/26/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-11, and 15-18, are drawn to a border assembly for a mattress or bedding material classified in class 5, subclass 690.
 - II. Claim 12-14, drawn to process of making a collapsible border assembly classified in class 29, subclass 428.
2. Inventions I and II are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case, the product as claimed (a border assembly for a mattress) can be made by a materially different process by pivotally fastening 4-straight boards at their respective ends, forming 90 degree angles between the four joints. Mitering the rails at an angle between 30 and 60 degrees is not necessary to form a collapsible border.
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

The inventions are distinct, each from the other because of the following reasons:

4. During a telephone conversation with Patricia Rogowski on 12/8/2005 a provisional election was made with traverse to prosecute the invention of a border assembly for a mattress, claims 1-11 and 15-18. Affirmation of this election must be made by applicant in replying to this Office action. Claims 12-14 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claim 18 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 18 recites the limitation "said collapsible border assembly" in line 3. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-5, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over O'Connell (US 2003/0000021) in view of Owens et al. (US 2004/0055086).

O'Connell discloses a border assembly for a mattress comprising a first side rail (Figure 4, #10), a first end rail (Figure 4, #32), a second side rail (Figure 4, #10'), a second end rail (Figure 4, #32'). Owens discloses a collapsible foam foundation for a bed mattress comprising hinges (para. 0027) allowing for simple assembly. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the border assembly (specifically, said side and end rails) taught by O'Connell with the hinges as taught by Owens in order to allow the user to quickly and easily assemble the collapsible border as well as allowing pivotal movement of said side and end rails.

Regarding claim 2, O'Connell discloses said rails are of polyurethane foam (para. 0026).

With regards to claim 3, the modified invention includes a hinge between said first end rail and said first side rail allowing pivotal movement.

Regarding claim 4, the modified invention includes a hinge between said second side rail and said first end rail allowing pivotal movement.

Regarding claim 5, it is well known in the art that hinges can be formed from a plastic material as a design choice. It would have been obvious to one having ordinary skill in the art to form the hinges from a plastic material.

Regarding claim 16, O'Connell discloses a mattress (Figure 7, #50) comprising the border assembly.

9. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over O'Connell (US 2003/0000021) in view of Owens et al. (US 2004/0055086), in further view of Johenning (US 4197602). O'Connell discloses a border assembly for a mattress comprising a first side rail (Figure 4, #10), a first end rail (Figure 4, #32), a second side rail (Figure 4, #10'), a second end rail (Figure 4, #32'). Owens discloses a collapsible foam foundation for a bed mattress comprising hinges (para. 0027) allowing for simple assembly. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the border assembly (specifically, said side and end rails) taught by O'Connell with the hinges as taught by Owens in order to allow the user to quickly and easily assemble the collapsible border as well as allowing pivotal movement of said side and end rails. O'Connell also discloses said rails are of polyurethane foam (para. 0026). The modified invention taught by O'Connell and Owens discloses the claimed invention except for mitered end walls. Johenning discloses a bed frame comprising of mitered rails (Figure 1, #26) to mate with each other. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify said side rails as taught by O'Connell with the mitered rails as taught by Johenning in order to suitably mate with each other. Regarding claim 6, the modified border assembly comprises a hinge that is formed by retaining a portion of foam material between said first end rail and said first side rail when cutting a mitered end wall in each of said walls.

10. Claims 7-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over O'Connell (US 2003/0000021) in view of Owens et al. (US 2004/0055086) in further

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view of Johenning (US 4197602). O'Connell discloses a border assembly for a mattress comprising a first foam side rail (Figure 4, #10) having a top wall (Figure 7, #12), a bottom wall (Figure 1, #14), an outer side wall and an inner side wall (para. 0024); a first foam end rail (Figure 4, #32) having a top wall (Figure 4, #34), a bottom wall (Figure 4, #36), an outer side wall and inner side wall (Figure 4, #40); a second foam side rail (Figure 4, #10') having a top wall (Figure 7, #12'), a bottom wall (Figure 7, #14'), an outer side wall and inner side wall (Figure 4, #18'); a second foam end rail (Figure 4, #32') having a top wall (para. 0026), a bottom wall (para. 0026), an outer side wall and inner side wall (para. 0026).

Owens discloses a collapsible foam foundation for a bed mattress comprising hinges (para. 0027) allowing for simple assembly. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the border assembly (specifically, said side and end rails) taught by O'Connell with the hinges as taught by Owens in order to allow the user to quickly and easily assemble the collapsible border as well as allowing pivotal movement of said side and end rails.

Johenning discloses a bed frame comprising of mitered rails (Figure 1, #26) to mate with each other. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify said side rails as taught by O'Connell with the mitered rails as taught by Johenning in order to suitably mate with each other.

Regarding claim 8, O'Connell discloses said first and second side and end rails comprise polyurethane foam (para. 0026).

With regards to claim 9, the modified invention includes a hinge between the first side rail and first end rail.

With regards to claim 10, the modified invention includes a hinge between the second side rail and the first end rail.

Regarding claim 11, it is well known in the art that hinges can be formed from a plastic material as a design choice. It would have been obvious to one having ordinary skill in the art to form the hinges from a plastic material.

11. Claims 15 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over O'Connell (US 2003/0000021) in view of Owens et al. (US 2004/0055086).

O'Connell discloses a mattress assembly kit border comprising a mattress core section (Figure 7, #50), first and second rails (Figure 7, #10 and #10'), first and second end rails (Figure 7, #32 and #32'), a center opening (Figure 7, not labeled) to accommodate the mattress core section; and a top sheet (Figure 7, #70), a bottom sheet (Figure 7, #72).

Owens shows a collapsible foam foundation for a bed mattress comprising hinges (para. 0027) allowing for simple assembly. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the border assembly (specifically, said side and end rails) taught by O'Connell with the hinges as taught by Owens in order to allow the user to quickly and easily assemble the collapsible border as well as allowing pivotal movement of said side and end rails.

Regarding claim 17, the modified invention discloses a mattress (O'Connell: Figure 7, #50) comprising the assembly kit.

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12. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over O'Connell (US 2003/0000021) in view of Owens et al. (US 2004/0055086). O'Connell shows a method of making a mattress comprising expanding collapsible border having first side rail (Figure 7, #10) and second side rail (Figure 7, #10') attached to first end rail (Figure 7, #32) and second end rail (Figure 7, #32'), wherein said side and end rails define a center opening; inserting a mattress core (Figure 7, #50) into said opening; attaching a top sheet (Figure 7, #70) onto top walls of said side rails and end rails; attaching a bottom sheet (Figure 7, #72) onto bottom walls of said side rails and end rails.

Owens shows a collapsible foam foundation for a bed mattress comprising hinges (para. 0027) allowing for simple assembly. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the border assembly (specifically, said side and end rails) taught by O'Connell with the hinges as taught by Owens in order to allow the user to quickly and easily assemble the collapsible border as well as allowing pivotal movement of said side and end rails.

The examiner has taken official notice of encasing said mattress core, said collapsible border assembly, and said top and bottom sheets with a fabric or casing, as well known in the bed art and obvious as disclosed by Brooks et al. (US 2004/0172754).

Conclusion

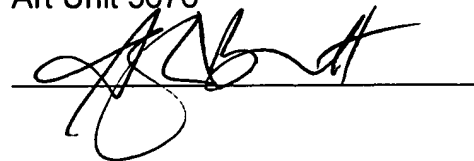
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jonathan J. Liu whose telephone number is (571) 272-8227. The examiner can normally be reached on Monday through Friday, 8 am - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Suzanne Barrett can be reached on (571) 272-7053. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jonathan J Liu
Examiner
Art Unit 3673

Suzanne Barrett
Supervisory Patent Examiner
Art Unit 3676

A handwritten signature in black ink, appearing to read 'S. Barrett', is written over a horizontal line.